

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK FLUELLEN	:	CIVIL ACTION
	:	
	:	NO. 12-6751
v.	:	
	:	
JOHN KERESTES, et al.,	:	
	:	

**AMENDED ORDER**

AND NOW this 27th day of February, 2013, upon consideration of the Report and Recommendation of Magistrate Judge Timothy R. Rice (Dkt. No. 4) and reviewing petitioner Frank Fluellen's objections thereto (Dkt. No. 6) and Fluellen's Motion for Inspection and Discovery (Dkt. No. 5), I find that Fluellen's objections to the Report and Recommendation are a restatement of the issues raised in his underlying petition for habeas corpus relief and are without merit; it further appearing after de novo review of this matter that Magistrate Judge Rice's Report and Recommendation correctly determined the legal and factual<sup>1</sup> issues presented in the petition for habeas corpus relief, IT IS ORDERED that Magistrate Judge Rice's Report and Recommendation is APPROVED and ADOPTED;

IT IS FURTHER ORDERED that Fluellen's objections to Magistrate Judge Rice's Report and Recommendation are OVERRULED;

IT IS FURTHER ORDERED that Fluellen's Motion for Inspection and Discovery is DENIED.

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<sup>1</sup> I note only that there appears to be a typographical error in Judge Rice's report that does not change my conclusions. Judge Rice writes that "[t]he trial court sentenced Fluellen to life imprisonment for his first-degree murder conviction." Dkt. No. 4. ECF p. 3. It appears that Fluellen was convicted of second-degree murder, as the Report states in all other references to this conviction. Dkt. No. 4. ECF p. 1, 4, 5-7.

Under 28 U.S.C. § 2253(c), a certificate of appealability may issue only if “the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); Because I find that Fluellen’s objections are without merit and that reasonable jurists would not debate the Report and Recommendation’s procedural or substantive dispositions of Fluellen’s claims, see Slack v. McDaniel, 529 U.S. 473, 484 (2000), he accordingly has not made a substantial showing of the denial of a constitutional right and it is ORDERED that a certificate of appealability will not issue.

IT IS FURTHER ORDERED that the Clerk of Court shall close this matter for statistical purposes.

/s/ Thomas N. O’Neill  
THOMAS N. O’NEILL, JR., J.